

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9998 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MAHENDRABHAI N LAKUM

Versus

STATE OF GUJARAT

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Appearance:

MS SADHANA SAGAR for Petitioner

MR VB GARANIA, AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 19/02/97

ORAL JUDGEMENT

Through this Special Civil Application, the petitioner seeks a direction against the denial of appointment on compassionate grounds to him as contained in the order dated 27th December 1995. The petitioner's father Naranbhai Ramabhai Lakum, a member of Scheduled Caste, expired on 6th September 1990 during the course of employment. He was a Class-IV employee under the

respondents. His son, i.e., the present petitioner, applied in the prescribed form to the respondents for his appointment on compassionate ground as he had been proposed for the same, by his mother. No decision was taken by the authority despite the representations. The petitioner, therefore, filed Special Civil Application No. 7971 of 1995 before this Court and this Special Civil Application was decided on 5th October 1995, making the Rule absolute and directing the respondents to act as per the Government Resolution dated 6th September 1989. The petitioner's mother, thereafter filed Special Civil Application No. 4691 of 1996 which came to be dismissed as withdrawn, on 11th July 1996 on the ground that the learned Counsel for the petitioner's mother stated that, she had no locus to file the petition. Thereafter, the petitioner himself has preferred this Special Civil Application on 9th December 1996. The notice was issued to the respondents as to why this Special Civil Application should not be admitted and finally disposed of. That order dated 10th December 1996 is treated as the Rule. Mr. Garania, learned AGP waived the service of Rule. On 13th February 1997, Mr. Garania was specifically asked to show as to how the deceased father of the petitioner was being treated as a daily wager in view of the order dated 6th November 1995, Annexure.E, placed on record by the petitioner. The only ground on which the appointment on compassionate ground has been denied to the petitioner is that, his father was a daily wager and not a permanent employee. The affidavit-in-reply dated 17th February 1997 has been filed on behalf of the respondent no.1, but it does not explain as to how in face of the letter dated 6th November 1995, Annexure.E, issued by the Deputy Executive Engineer and sent to the Executive Engineer, the petitioner's father could be treated as a daily wager only. This letter dated 6th November 1995 clearly shows that the petitioner's deceased father had been made permanent in the service and with this letter, the Deputy Executive Engineer had sent three copies of the order making Naranbhai Ramabhai a permanent employee and it was also mentioned that the pension papers had been prepared and the copy of the sanction of the pension order had been sent. Thus, the genuineness and correctness of this letter dated 6th November 1995 is not disputed by the respondents and nothing has been said in the affidavit-in-reply. With regard to this document, in paragraph 5 of the reply, it has been mentioned that, according to the Government Resolution dated 18th July 1994, the petitioner's father was eligible for medical leave, pension, earned leave etc. Thus, there is no room for doubt that the petitioner's father was in permanent

employment. It is strange that, the reply still says that the petitioner's father was not a regular or permanent employee. It is, thus, found that the order of the respondent no.1 denying appointment to the petitioner on the basis that his father was only a Rojamdar, i.e. daily wager, is absolutely erroneous and there is no ground to deny the appointment on compassionate ground to the petitioner on that basis. Accordingly, the order dated 27th December 1995, cannot be sustained. The same is hereby quashed and set aside.

The petition succeeds and the respondents are hereby directed to take up the question of giving appointment to the petitioner on compassionate ground in accordance with the relevant Government Resolution dated 6.9.1989 as was ordered earlier by this Court, on 5.10.1995 in Special Civil Application No. 7971 of 1995. The decision in this regard shall be taken within a period of one month from the date the certified copy of this order is served upon the concerned respondent and such decision shall also be conveyed to the petitioner. Rule is made absolute accordingly. No order as to costs.

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